

BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

CYRUS OMEAD,

Certified Public Accountant  
Certificate Number 46776,

Respondent.

Case No. D3-1996-5

OAH No. L-2003100253

**PROPOSED DECISION**

Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on August 5 and October 14, 2004, at Los Angeles, California.

Lorrie M. Yost, Deputy Attorney General, represented Complainant.

Respondent Cyrus Omead represented himself.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Proposed Decision.

\* \* \* \* \*

**FINDINGS OF FACT**

1. Carol Sigmann made the Accusation and Petition to Revoke Probation in her official capacity as the Executive Officer of the Board of Accountancy (Board).

2. On or about December 5, 1986, the Board issued respondent Certified Public Accountant's certificate no. 46776. The certificate will expire on March 31, 2005, unless renewed. The CPA certificate is currently under probation and has been subjected to discipline as summarized, in pertinent part, herein below.

## Original Discipline

3. (A) On October 29, 1997, pursuant to a Stipulation and Settlement in the Matter of the Accusation against Cyrus Omead, Case No. AC 96-5, OAH No. L-9606120, the Board first disciplined respondent by revoking his certificate, staying revocation, and placing the certificate on probation for three years. Respondent was disciplined due to his gross negligence in performing an audit of a defined benefit and profit sharing plan and in preparing tax returns for an individual in violation of Business and Professions Code Section 5100 and due to his failure to conform compilations reports to professional standards in violation of Business and Professions Code Sections 5062. Respondent admitted and stipulated to the violations and discipline. He was represented by counsel in that proceeding and stated that he had read the stipulation and discussed the stipulation with his attorney.

(B) Pursuant to the Stipulation and Settlement of October 29, 1997, the Board imposed certain terms and conditions of probation upon respondent's certificate, including Condition No. 9 which stated:

9. CPA Examination--Respondent shall take and pass the auditing section of the CPA examination before the end of his probation. Respondent may not perform any audits until he passes the auditing section of the CPA examination. Failure to pass the required the examination no later than 100 days before the termination of probation shall constitute a violation of probation.

Under this stipulated revocation and probationary order, respondent's probation was imposed beginning on October 29, 1997, and was set to end on October 28, 2000. Respondent was required to take and pass the auditing section of the CPA examination no later than on or about July 18, 2000.

## First Petition to Revoke Probation

4. On February 25, 1999, the Board made and filed a Petition to Revoke Probation, Case No. AC-96-5, against respondent for his failure to comply with his probationary conditions. Specifically, respondent failed to file quarterly reports and to reimburse the Board for its costs.

5. Effective on October 24, 1999, in the Matter of the Petition to Revoke Probation, Case No. AC-96-5, OAH No. L-1999040110, the Board revoked respondent's probation and certificate, stayed revocation, and placed his certificate on probation for three additional years upon certain terms and conditions. The grounds for revocation were that respondent failed to comply with probationary terms. With the imposition of a longer term of probation, the Board reiterated and reimposed the probationary condition that respondent take and pass the auditing portion of the CPA examination, as follows:

Respondent shall take and pass the auditing section of the CPA examination before the end of his initial period of probation. Respondent may not perform any audits until he passes the auditing section of the CPA examination. Failure to pass the required examination no later than one hundred (100) days before the termination of the initial period of probation, shall constitute a violation of probation.

In other words, respondent's probationary period was extended to October 28, 2003, and again he was specifically required to take and pass the auditing section of the CPA examination.

6. However, the Decision and Order in Case No. AC-96-5, OAH No. L-1999040110, was unclear as to when respondent was required to pass the auditing examination. The disciplinary order extended his period of probation by three years to October 2003 but still referenced the words "before the end of his initial period of probation", or October 1997, when requiring that he take and pass the auditing examination. [Emphasis added.]

#### Second Petition to Revoke Probation

7. On September 29, 2000, in Case No. D2-96-5, the Board made and filed a second Petition to Revoke Probation against respondent, seeking revocation of his probation on the grounds, in part, that he had unsuccessfully taken the auditing examination once and had not submitted another application to take the examination. Subsequently, the Board withdrew its Petition to Revoke Probation in Case No. D2-96-5. Under his disciplinary order, respondent had until on or about July 18, 2003, to take and pass the auditing section of the CPA examination.

#### First Petition to Modify Probation

8. (A) On or about November 3, 2000, respondent filed a petition to modify probation in which he asked that, in lieu of taking the auditing section of the CPA examination, he be permitted to take additional audit courses. On March 24, 2001, the Board heard the petition. Respondent argued that he had passed the CPA examination once before (i.e. prior to his initial licensure) and he offered to perform a sample audit and submit the audit for review instead of taking and passing the auditing examination.

(B) On April 19, 2001, in the Decision in the Matter of the Petition for Modification of Probation, Case No. D1-96-5-1, OAH No. L-2000120345, the Board determined that respondent had not shown cause to be relieved from taking and passing the auditing section of the CPA examination. However, in order to give him additional time to prepare for the auditing examination, the Board ordered that the condition be modified to delete the word "initial" from the first and last sentence of the condition and replacing that word in the last sentence with the word "his." As such the Board modified the condition to read as follows:

Respondent shall take and pass the auditing section of the CPA examination before the end of his period of probation.

Respondent may not perform any audits until he passes the auditing section of the CPA examination. Failure to pass the required examination no later than 100 days before the termination of the period of probation shall constitute a violation of probation.

Thus, on April 21, 2001, the Board reiterated and re-emphasized to respondent that he was required to take and pass the auditing section of the CPA examination before the termination of his probation. His probation was scheduled to end October 28, 2003. He was required to take and pass the auditing examination no later than 100 days before October 28, 2003.

#### Second Petition to Modify Probation

9. On May 23, 2003, Respondent filed a second Petition for Modification of Probation. In his petition, respondent sought elimination of the probationary term requiring him to pass the audit portion of the CPA examination or, in the alternative, requested an unlimited amount of time to comply with the requirement.

10. Prior to the hearing on the second petition, Respondent filed a letter with the Board, further explaining his position and providing his view of his disciplinary history. During the hearing, petitioner pleaded for understanding from the Board and requested clarification of whether he was actually required to take and pass the auditing examination. He stated he would take and pass the examination if that was the Board's order.

11. At that hearing, Respondent explained to the Board that he did not conduct audits or perform compilations in his present accounting practice. He only prepared tax returns and performed bookkeeping functions. He had no plans to conduct audits. He worked part-time at his accounting business and spent the remainder of his time managing his properties.

12. As of the time of the hearing on the second petition, Respondent had twice attempted to pass the audit section of the CPA examination; in May 1998 and in May 2003. He failed in both attempts, scoring well below the passing grade. He asserted that because he was working and supporting his family, he had not devoted sufficient time and effort to pass the audit section of the CPA examination. He explained that he had taken the May examination, which was right after the busy tax season.

13. In its Decision denying Respondent's second petition for modification of his probation, the Board stated, in part:

Respondent failed to present any persuasive evidence or argument why the Board should modify its original order. Even though he may be preparing tax returns and performing

bookkeeping duties, he is still performing accounting duties. As a certified accountant, he should be able to pass the auditing portion of the CPA examination.

14. From the time disciplinary proceedings were first commenced against Respondent, the Board has required him to take and pass the auditing portion of the CPA examination. To date, he has not done so. At the hearing of the instant matter, Respondent made the same arguments as to why his accounting certificate should not be revoked as he has done several times before. He went even further, stating simply that he just cannot pass the exam. He argued that he has complied with all other terms of his probation, including the payment of all previously awarded costs, which exceeded \$8,700, and that he is being "persecuted" by the Board for its insistence that he pass the audit examination. It is indeed unfortunate that Respondent is incapable of passing the audit portion of the examination; however, that is a requirement of all CPAs, even those who do not perform audits. Passage of the audit examination was required so that Respondent could demonstrate his proficiency as a Board licensee. Since he has not done so, and admitted that he is incapable of doing so, the Board has no choice but revoke his accounting certificate.

15. Except as found herein to be true, any remaining allegations contained in the Accusation and Petition to Revoke Probation and not addressed herein are found to be unproven by clear and convincing evidence.

\* \* \* \* \*

### CONCLUSIONS OF LAW

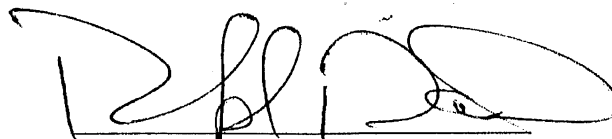
1. Respondent has violated provision 9 of his probation, the requirement that he take and pass the audit portion of the CPA examination, by reason of Findings 3 through 14.

### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certified Public Accountant Certificate Number 46776 issued to Respondent Cyrus Omead, together with all licensing rights appurtenant thereto, is revoked.

Date: 12-7-04



RALPH B. DASH

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition  
to Revoke Probation Against:

File No. D3-1996-5  
OAH No. L-2003100253

CYRUS OMEAD  
6240 Laurel Canyon Blvd., Suite 211  
North Hollywood, CA 91606

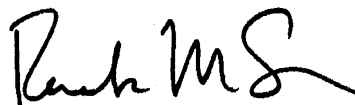
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby  
adopted by the BOARD OF ACCOUNTANCY as its Decision in the above-entitled matter.

This Decision shall become effective on January 25, 2005.

IT IS SO ORDERED January 25, 2005.



PRESIDENT

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Modification of Probation of:

CYRUS OMEAD  
6240 Laurel Canyon Boulevard, No. 211  
North Hollywood, California 91606,

OAH No. L-2003070464

Certified Public Accountant  
Certificate No. 46776,

Respondent.

**DECISION**

This matter was heard on September 19, 2003, at Los Angeles by a quorum of the California Board of Accountancy comprised of Wendy S. Perez, C.P.A., President; Ian B. Thomas, Vice President; Joseph Tseng, C.P.A., Secretary/Treasurer; Ronald Blanc, Esq.; Richard S. Charney, D.C.; Charles R. Drott, C.P.A.; Sally A. Flowers; Gail K. Hillebrand, Esq.; Thomas Iino, C.P.A.; Clifton Johnson; Michael S. Schneider, C.P.A.; Renata Sos, Esq.; and Stuart T. Waldman, Esq. The Attorney General of California was represented by Deputy Attorney General Michael Granen. Petitioner was present and represented himself. Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, presided over the hearing.

Oral and documentary having been received and the matter submitted for decision, the California Board of Accountancy finds as follows:

**FACTUAL FINDINGS**

1. (A) On or about May 23, 2003, Cyrus Omead. (hereinafter petitioner) filed a Petition for Modification of Probation with the Enforcement Unit of the California Board of Accountancy (hereinafter also Board). In his petition, respondent seeks elimination of the probationary term requiring him to pass the audit portion of the CPA examination or, in the alternative, requests an unlimited amount of time to comply with the requirement.

(B) Prior to the hearing on his petition, petitioner filed a letter with the Board, further explaining his position and providing his view of his disciplinary history (Exh. A). During the hearing, petitioner pleaded for understanding from the Board and requested

clarification whether he is actually required to take and pass the auditing examination. He states he will take and pass the examination if that it is the Board's order.

2. On or about December 5, 1986, the Board issued petitioner certified public accountant's certificate no. 46776. The certificate will expire on March 31, 2005, unless renewed. Petitioner has master of arts degrees from UCLA and the University of Oklahoma. His CPA certificate is currently under probation and has been subjected to discipline as summarized, in pertinent part, hereinbelow.

#### Original Discipline

3. (A) On October 29, 1997, pursuant to a Stipulation and Settlement in the Matter of the Accusation against Cyrus Omead, Case No. AC 96-5, OAH No. L-9606120, the Board first disciplined petitioner's certificate by revoking his certificate, staying revocation, and placing his certificate on probation for three years. His certificate was disciplined due to his gross negligence in performing an audit of a defined benefit and profit sharing plan and in preparing tax returns for an individual in violation of Business and Professions Code Section 5100 and due to his failure to conform compilations reports to professional standards in violation of Business and Professions Code Sections 5062. Respondent admitted and stipulated to the violations and discipline. He was represented by counsel in that proceeding and stated that he had read the stipulation and discussed the stipulation with his attorney.

(B) Pursuant to the Stipulation and Settlement on October 29, 1997, the Board imposed certain terms and conditions of probation upon petitioner's certificate, including Condition No. 9 which stated:

"9. CPA Examination--Respondent shall take and pass the auditing section of the CPA examination before the end of his probation. Respondent may not perform any audits until he passes the auditing section of the CPA examination. Failure to pass the required the examination no later than 100 days before the termination of probation, shall constitute a violation of probation."

Under this stipulated revocation and probationary order, petitioner's probation was imposed beginning on October 29, 1997, and was to end on October 28, 2000. He was required to take and pass the auditing section of the CPA examination no later than on or about July 18, 2000.

#### First Petition to Revoke Probation

4. On February 25, 1999, the Board made and filed the Petition to Revoke Probation, Case No. AC-96-5, against petitioner for his failure to comply with his probationary conditions. Specifically, respondent failed to file quarterly reports and to reimburse the Board for its costs.



5. Effective on October 24, 1999, in the Matter of the Petition to Revoke Probation, Case No. D1-96-5, OAH No. L-1999040110, the Board revoked petitioner's probation and certificate, stayed revocation, and placed his certificate on probation for three additional years upon certain terms and conditions. The grounds for revocation were that petitioner failed to comply with probationary terms. With the imposition of a longer term of probation, the Board reiterated and imposed the probationary condition that petitioner take and pass the auditing portion of the CPA examination as follows:

"Respondent shall take and pass the auditing section of the CPA examination before the end of his initial period of probation. Respondent may not perform any audits until he passes the auditing section of the CPA examination. Failure to pass the required examination no later than one hundred (100) days before the termination of the initial period of probation, shall constitute a violation of probation."

In other words, petitioner's probationary period was extended to October 28, 2003, and he was specifically required again to take and pass the auditing section of the CPA examination.

6. (A) However, the Decision and Order in Case No. AC-96-5, OAH No. L-1999040110, was unclear as to when petitioner was required to pass the auditing examination. The disciplinary order extended his period of probation by three years to October 2003 but still referenced the words "before the end of his initial period of probation", or October 1997, when requiring that he take and pass the auditing examination. [Emphasis added.]

(B) On September 29, 2000, in Case No. D2-96-5, the Board made and filed a second Petition to Revoke Probation against petitioner, seeking revocation of his probation on the grounds, in part, that he had unsuccessfully taken the auditing examination once and had not submitted another application to take the examination. Subsequently, the Board withdrew its Petition to Revoke Probation in Case No. D2-96-5. Under his disciplinary order, respondent had until on or about July 18, 2003, to take and pass the auditing section of the CPA examination.

#### First Petition to Modify Probation

7. (A) On or about November 3, 2000, petitioner filed a petition to modify probation in which he asked that, in lieu of taking the auditing section of the CPA examination, he be permitted to take additional audit courses. On March 24, 2001, the Board heard the petition. Petitioner argued that he had passed the CPA examination once before and he offered to perform a sample audit and submit the audit for review instead of taking and passing the auditing examination.

(B) On April 19, 2001, in the Decision in the Matter of the Petition for Modification of Probation, Case No. D1-96-5-1, OAH No. L-2000120345, the Board of Accountancy determined that petitioner had not shown cause to be relieved from taking and passing the auditing section of the CPA examination. However, in order to give him

additional time to prepare for auditing examination, the Board ordered that the condition be modified to delete the word "initial" from the first and last sentence of the condition and replacing that word in the last sentence with the word "his". As such the Board modified the condition to read as follows:

"Respondent shall take and pass the auditing section of the CPA examination before the end of his period of probation. Respondent may not perform any audits until he passes the auditing section of the CPA examination. Failure to pass the required examination no later than 100 days before the termination of the period of probation shall constitute a violation of probation."

Thus, on April 21, 2001, the Board reiterated and re-emphasized to petitioner that he was required to take and pass the auditing section of the CPA examination before the termination of his probation. His probation is scheduled to end October 28, 2003. He is required to take and pass the auditing examination no later than 100 days before October 28, 2003.

#### Current Petition to Modify Probation

8. Petitioner explains that he does not conduct audits or performs compilations in his present accounting practice. He only prepares tax returns and performs bookkeeping functions. He has no plans on conducting audits. He works part-time at his accounting business and spends the remainder of his time managing his properties.

9. Petitioner has twice attempted to pass the audit section of the CPA examination in May 1998 and in May 2003. He failed in both attempts, scoring well below the passing grade. Because he is working and supporting his family, petitioner has not devoted sufficient time and effort to pass the audit section of the CPA examination. He explains that he has taken the May examinations which were right after the busy tax season.

10. Petitioner admits that he has not adequately studied for the auditing examination but suggests that he did not do so because he did not think he was required to pass the examination. His claims are not persuasive and he was not entirely candid. Six years ago, in October 1997, petitioner stipulated to having his license placed on probation on condition, in part, that he take and pass the auditing examination. He has taken and failed the examination twice. Twice, the Board has issued decisions and orders reiterating the probationary requirement that he pass the examination. About two years ago, he filed his first petition to modify his probation and asked to take auditing courses in lieu of passing the examination. Thus, petitioner has known, and acknowledged by his conduct of attempting the examination and filing a previous petition, that he is required by his probation with the Board of Accountancy to take and pass the auditing portion of the CPA examination.

11. Petitioner failed to present any persuasive evidence or argument why the Board should modify its original order. Even though he may be preparing tax returns and performing bookkeeping duties, he is still performing accounting duties. As a certified accountant, he should be able to pass the auditing portion of the CPA examination.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

### LEGAL CONCLUSIONS

Grounds do not exist under Government Code Section 11522 to modify respondent's probation by eliminating or changing the probationary requirement that he take and pass the auditing portion of the CPA examination no later than 100 days before the end of his current probation in that respondent did not demonstrate by any probative evidence or valid reasons why the condition should be eliminated or changed, based on Findings 1 – 11 above.

\* \* \* \* \*

WHEREFORE, the following Order is hereby made:

### ORDER

The Petition for Modification of Probation filed by respondent Cyrus Omead, 6240 Laurel Canyon Boulevard, Suite 211, North Hollywood, California, must be denied. Respondent shall continue to comply with the terms and conditions of his probation including the requirement that he take and pass the auditing portion of the CPA no later than 100 days before the termination of probation.

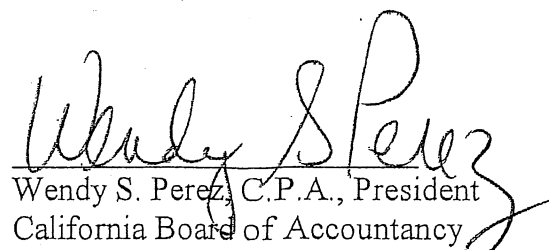
### DECISION

This Decision is hereby adopted by the California Board of Accountancy and shall become effective on

October 28, 2003

IT IS SO ORDERED.

Dated: 10/28/03

  
Wendy S. Perez, C.P.A., President  
California Board of Accountancy

1 BILL LOCKYER, Attorney General  
of the State of California  
2 CHRISTOPHER J. RUIZ, State Bar No. 165017  
Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
4 Los Angeles, CA 90013  
Telephone: (213) 897-2535  
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

Case No. D3-1996-5

11 CYRUS OMEAD  
12 6240 Laurel Canyon Blvd., Suite 211  
North Hollywood, CA 91606

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

13 Certified Public Accountant  
14 Certificate No. 46776

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Carol Sigmann (Complainant) brings this Accusation and Petition to  
20 Revoke Probation solely in her official capacity as the Executive Officer of the Board of  
21 Accountancy (Board), Department of Consumer Affairs, State of California.

22 2. On or about December 5, 1986, the Board issued Certified Public  
23 Accountant Certificate No. 46776 to Cyrus Omead (Respondent). The Certificate was placed on  
24 administrative hold and was not valid during the period April 1, 2003 through June 8, 2003. The  
25 Certificate will expire on March 31, 2005, unless renewed.

26 //

27 //

28 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

4. Section 5100 of the Code states:

• • • •

5. Section 5050 of the Code states:

6. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period in which the license may be renewed, restored, reissued or reinstated.

//

11

//

*il*

1 BOARD RULE<sup>1</sup>

2 7. California Code of Regulations, title 16, section 87.7, subdivision (a)  
3 states:

4 "In order to renew a license in an active status a licensee shall, within the six years  
5 preceding the license expiration date, complete a continuing education course on the provisions  
6 of the Accountancy Act and the Board of Accountancy Regulations, application to current  
7 practice, and other rules of professional conduct. Such course shall be approved by the Board  
8 prior to the licensee receiving continuing education credit for the course and shall be a minimum  
9 of 8 hours."

10 CAUSE FOR DISCIPLINE

11 (Unlicensed Practice)

12 8. Respondent is subject to disciplinary action under section 5100,  
13 subdivision (g), of the Code on the grounds of unprofessional conduct for violating section 5050  
14 in that Respondent was practicing public accountancy without a license, as follows:

15 a. During the period April 1, 2003 through on or about June 8, 2003,  
16 Respondent provided income tax preparation services as a Certified Public Accountant while  
17 without practice rights (ie. without a valid license). Respondent's certified public accountant  
18 certificate was placed on administrative hold and was not valid during the period April 1, 2003  
19 through June 8, 2003, because he had failed to complete a continuing education course in  
20 accordance with Board Rule 87.7(a). Respondent was notified in writing that his CPA certificate  
21 was not valid and that he should cease and desist practicing until his certificate was renewed to  
22 active and valid status. However, respondent continued to practice without a valid license during  
23 the aforementioned time period.

24 PETITION TO REVOKE PROBATION

25 1. The allegations of paragraphs 1 through 8 of the Accusation are  
26 \_\_\_\_\_

27 1. Board of Accountancy Rules and Regulations are codified in Title 16, California Code of Regulations  
28 beginning with Division 1, Section 1, under corresponding numbers and are hereinafter referenced as "Board  
Rules".

1 incorporated by reference as if fully set forth and are realleged.

2                 2.       In a disciplinary action entitled "In the Matter of Accusation Against Cyrus  
3 Omead" Case No. AC-96-5, the Board issued a decision, effective October 29, 1997, which  
4 adopted the Stipulation in Settlement reached by the parties. Respondent's Certified Public  
5 Accountant Certificate was revoked. However, the revocation was stayed and Respondent's  
6 license was placed on probation for a period of three (3) years with certain terms and conditions.  
7 Condition No. 9 required that Respondent take and pass the auditing portion of the CPA exam at  
8 least one-hundred (100) days before the termination of probation. A copy of that decision is  
9 attached as Exhibit A and is incorporated by reference.

10                3.       In a disciplinary action entitled "In the Matter of the Petition to Revoke  
11 Probation Against Cyrus Omead," Case No. D1-96-5, the Board issued a decision, effective  
12 October 24, 1999, in which Respondent's Certified Public Accountant Certificate was revoked.  
13 However, if Respondent's certificate was in a renewed status or renewed prior to the effective  
14 date of the Decision, the revocation would be stayed and Respondent placed on probation for  
15 three (3) years beyond the termination of the probationary period presently in effect, upon terms  
16 and conditions. Respondent's certificate was in a renewed status when the Decision became  
17 effective and was, therefore, placed on probation for an additional three years. A copy of that  
18 decision is attached as Exhibit B and incorporated herein by reference.

19                4.       In a disciplinary action entitled "In the Matter of the Petition to Revoke  
20 Probation Against Cyrus Omead," Case No. D2-96-5, the Board filed a second Petition to  
21 Revoke Probation on September 29, 2000. Respondent submitted a Petition for Modification of  
22 Probation which requested that Condition No. 9 be modified to permit him to take additional  
23 audit courses in lieu of taking the auditing section of the CPA exam and to reduce the period of  
24 probation to April 30, 2001. On April 19, 2001, the Board issued a decision on the Petition for  
25 Modification, Case No. D1-96-5-1, in which the pending Petition to Revoke Probation, Case No.  
26 D2-96-5, against Respondent was withdrawn and Condition 9 was modified. The Order allowed  
27 respondent additional time to take and pass the auditing section of the CPA exam. Petitioner's  
28 time was extended until July 20, 2003, one-hundred (100) days before the termination of

1 probation, to take and pass the auditing portion of the CPA exam. A copy of the Petition to  
2 Revoke Probation and Decision are attached as Exhibits C and D, respectively, and are  
3 incorporated herein by reference.

4 CAUSE TO REVOKE PROBATION

5 5. The probation of Respondent Cyrus Omead is subject to revocation in that  
6 Respondent failed to comply with conditions 2 and 9 of probation in the following respects:

7 A. Probation Condition 2 states:

8 "Respondent shall obey all federal, California, other states' and local laws,  
9 including those relating to the practice of public accountancy in California."

10 Respondent's Certificate was placed on administrative hold and not valid during  
11 the period April 1, 2003 through June 8, 2003. Respondent practiced public accountancy during  
12 the period when his license was on administrative hold and was not valid.

13 B. Probation Condition 9 states:

14 "Respondent shall take and pass the auditing section of the CPA examination  
15 before the end of his initial period of probation. Respondent may not perform any audits until he  
16 passes the auditing section of the CPA examination. Failure to pass the required examination no  
17 later than one hundred (100) days before the termination of the initial period of probation, shall  
18 constitute a violation of probation."<sup>2</sup>

19 Respondent failed to take and pass the audit section of the CPA examination, no  
20 later than 100 days before the end of his period of probation.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
23 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

24 1. Revoking the probation that was granted by the California Board of  
25 Accountancy in Case Nos. D1-96-5 and D1-96-5-1 and imposing the disciplinary order that was

26 \_\_\_\_\_  
27 2. Condition 9 was modified by the Board's April 19, 2001, Order which gave Respondent  
28 until one-hundred (100) days before the termination of his probation, not the initial period of  
probation.



1 stayed thereby revoking Certified Public Accountant Certificate No. 46776 issued to Cyrus  
2 Omead ;

3 2. Revoking or suspending Certified Public Accountant Certificate No.  
4 46776, issued to Cyrus Omead;

5 3. Taking such other and further action as deemed necessary and proper.

6  
7 DATED: September 2, 2003

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

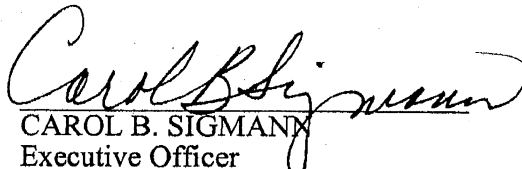
24

25

26

27

28

  
CAROL B. SIGMANN  
Executive Officer  
California Board of Accountancy  
Department of Consumer Affairs  
State of California  
Complainant

03583110-LA2003500311  
60009665.wpd  
CML (08/21/2003)

1 BILL LOCKYER, Attorney General  
of the State of California  
2 MICHEL W. VALENTINE  
Deputy Attorney General, State Bar No. 153078  
3 Department of Justice  
300 South Spring Street  
4 Los Angeles, California 90013  
Telephone: (213)897-1034

5 Attorneys for: Complainant

7 BEFORE THE BOARD OF ACCOUNTANCY  
8 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

9 In the Matter of the Accusation }

No. D2-1996-5

10 Against: }

11 CYRUS OMEAD, CPA  
12 6240 LAUREL CANYON BLVD STE 211  
NORTH HOLLYWOOD, CA 91606 }

WITHDRAWAL OF PETITION TO

REVOKE PROBATION

13 CPA Certificate No.46776 }

14 RESPONDENT.

15 Good cause appearing, the Petition to Revoke Probation in  
16 case number D2-1996-5 is hereby withdrawn.

17  
18 DATED: August 2, 2001  
19

20  
21 Carol Sigmann  
22  
23 CAROL SIGMANN, Executive Officer  
24 Board of Accountancy  
Department of Consumer Affairs  
25 State of California  
26  
27  
28  
29

BEFORE THE  
BOARD OF ACCOUNTANCY  
STATE OF CALIFORNIA

In the Matter of the Petition for	)	D1-96-5-1
Modification of Probation of:	)	
	)	OAH NO. L2000120345
CYRUS OMEAD,	)	
	)	
Petitioner.	)	
_____	)	

**DECISION**

This matter was heard on March 24, 2001, at Los Angeles, by a quorum of the California Board of Accountancy comprised of Donna McCluskey, CPA, President; Navid Sharafatian, Esq., Vice President; Michael S. Schneider, CPA, Secretary/Treasurer; and members Robert E. Badham; Harry E. "Mik" Mikkelsen, CPA; Baxter Rice; and Joseph Tseng. The Attorney General was represented by Michael R. Granen, Deputy Attorney General. The petitioner was present and represented himself. Jerry Mitchell, Administrative Law Judge of the Office of Administrative Hearings, presided.

**FACTUAL FINDINGS**

1. Certified Public Accountant Certificate No. 46776 was originally issued to Cyrus Omead ("petitioner") by the Board of Accountancy on or about December 5, 1986.

2. On July 17, 1996, an Accusation was filed against petitioner in Case No. AC-96-5, charging him with gross negligence in violation of Section 5100(c) of the Business and Professions Code. Petitioner waived his right to a hearing, except on the issue of reimbursement to the Board for its costs of investigation and prosecution, and stipulated to an order revoking his certificate, staying the revocation, and placing him on probation for three years on conditions which included Condition No. 9, to wit:

"Respondent shall take and pass the auditing section of the CPA examination before the end of his probation. Respondent may not perform any audits until he passes the auditing section of the CPA examination. Failure to pass the required examination no later than 100 days before termination of probation shall constitute a violation of probation."

The issue of reimbursement for costs was heard by an administrative law judge who issued a Proposed Decision ordering petitioner to reimburse the Board in the amount of \$8,712.21. The stipulated order placing petitioner on probation and the Proposed Decision ordering him to pay costs were adopted by the Board with an effective date of October 29, 1997.

3. On February 25, 1999, a Petition to Revoke Probation was filed, charging petitioner with failure to comply with a condition of his probation that required him to make quarterly reports, and failure to reimburse the Board for its costs as ordered. The matter was heard by an administrative law judge who issued a Proposed Decision revoking petitioner's certificate, staying revocation, modifying the aforementioned Condition No. 9, and extending his probation "for three (3) years beyond the termination of the probationary period presently in effect . . ." The Proposed Decision was adopted by the Board with an effective date of October 24, 1999. Condition No. 9, as modified in that decision, reads as follows:

"Respondent shall take and pass the auditing section of the CPA examination before the end of his **initial period of** probation. Respondent may not perform any audits until he passes the auditing section of the CPA examination. Failure to pass the required examination no later than 100 days before the termination of **the initial period of** probation shall constitute a violation of probation." [Emphasis added.]

4. On September 29, 2000, a Petition to Revoke Probation was filed against petitioner in Case No. D2-96-5, charging him with failure to comply with Condition No. 9 and two other conditions of his probation. That Petition is pending at this time. Petitioner appears to have complied, albeit belatedly, with the other two conditions, but stated that he is not prepared to pass the auditing section of the CPA examination, as required by Condition No. 9.

5. Petitioner has submitted a petition dated November 3, 2000, in which he requested that Condition No. 9 be modified to permit him to take additional audit courses in lieu of taking the auditing section of the CPA examination. He argued that he has already passed the CPA examination once, and he offered to perform a sample audit and submit it for review.

#### LEGAL CONCLUSIONS

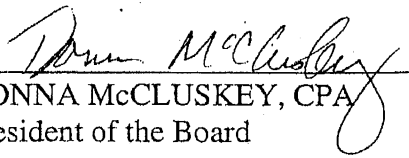
Petitioner has not shown cause to be relieved of the requirement that he take and pass the auditing section of the CPA examination. However, in order to give him additional time to prepare for that examination, the following order is made.

///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///

ORDER

The pending Petition to Revoke Probation against petitioner is withdrawn, and Condition No. 9 of his current probation is modified by deleting the word "initial" from the first and last sentences and replacing that word in the last sentence with the word "his."

DATED: April 19, 2001

  
DONNA McCLUSKEY, CPA  
President of the Board

1 BILL LOCKYER, Attorney General  
Of the State of California  
2 MICHEL W. VALENTINE,  
Deputy Attorney General, State Bar No. 153078  
3 300 South Spring Street, Suite 1702  
Los Angeles, California 90013  
4 Telephone: (213) 897-1034

5 Attorneys for Complainant

6  
7  
8 **BEFORE THE**  
9 **BOARD OF ACCOUNTANCY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke)  
12 Probation Against:

No. D2-96-5

13 CYRUS OMEAD  
6240 Laurel Canyon Blvd., Suite 211  
14 North Hollywood, CA 91606

PETITION TO REVOKE  
PROBATION

15 Certified Public Accountant  
Certificate No. 46776

16  
17 Respondent.

18  
19 Complainant, Carol Sigmann, for causes for discipline, alleges:

20 1. Complainant, Carol Sigmann, is the Executive Officer of the Board  
21 of Accountancy (hereinafter the "Board"), Department of Consumer Affairs, State of  
22 California and makes and files this petition to revoke probation solely in her official  
23 capacity.

24  
25 **LICENSE HISTORY**

26 2. On or about December 5, 1986, Certified Public Accountant  
27 Certificate Number 46776 was issued to Cyrus Omead, CPA (hereinafter "respondent").  
28 On July 17, 1996, an accusation was filed against respondent in Case No. AC-96-5.

1 On September 29, 1997, a Stipulation and Order in Case No. AC-96-5 was filed.  
2 Effective October 29, 1997, respondent's license to practice public accountancy was  
3 revoked; however, revocation was stayed and respondent was placed on probation for  
4 three (3) years under terms and conditions.

5 3. On February 25, 1999, a Petition to Revoke Probation was filed  
6 against respondent in Case No. D1-96-5. On September 24, 1999, the Board adopted  
7 the proposed decision of the administrative law judge, in its entirety, in Case No. D1-96-  
8 5. On October 24, 1999, the decision became effective and respondent's license to  
9 practice public accountancy was revoked; however, revocation was stayed and  
10 respondent was placed on probation for three (3) years beyond the termination of the  
11 probationary period then in effect. Relevant terms and conditions of the probation  
12 follow:

13  
14 **TERMS AND CONDITIONS**

15 4. Proposed Decision and Order No. D1-96-5 effective October 24,  
16 1999, states:

17 Condition 9 of probation provides as follows:

18 "9. Respondent shall take and pass the auditing section of the CPA  
19 examination before the end of his initial period of probation. Respondent may not  
20 perform any audits until he passes the auditing section of the CPA examination. Failure  
21 to pass the required examination no later than one hundred (100) days before the  
22 termination of the initial period of probation, shall constitute a violation of probation."

23 5. The probation of respondent Cyrus Omead, CPA, is subject to  
24 revocation in that respondent failed to comply with condition 9 of probation and the  
25 proposed decision and order that became effective October 24, 1999, for the following  
26 reasons:

27 a. Respondent was required to take and pass the auditing section  
28 of the CPA examination no later than one hundred (100) days before termination of the

1 initial period of probation which concludes on October 29, 2000. Respondent's first  
2 attempt at passing the exam was unsuccessful and respondent has not made any  
3 subsequent attempts since that time. Respondent failed to submit an application for the  
4 May 2000 exam which was the last opportunity for respondent to successfully pass in  
5 order to comply with the terms of probation.

6 Condition 11 of probation provides as follows:

7 "11. Respondent shall complete forty (40) hours of professional education  
8 courses as specified by the Board or its designee at the time of Respondent's next  
9 probation appearance. The professional education courses shall be completed no later  
10 than one hundred (100) days prior to the termination of the initial period of probation.  
11 This shall be as part of and not in addition to continuing education requirements for  
12 relicensing."

13 6. The probation of respondent Cyrus Omead, CPA, is subject to  
14 revocation in that respondent failed to comply with condition 11 of probation and the  
15 proposed decision and order that became effective October 24, 1999, for the following  
16 reasons:

17 a. Respondent was required to take forty (40) hours of continuing  
18 professional education ("CPE") courses to be completed by July 21, 2000. On May 22,  
19 2000, a certified letter was mailed to respondent reminding him that he needed to  
20 complete 40 hours of CPE by July 21, 2000. On August 2, 2000, a certified letter was  
21 mailed to Respondent reminding him to submit evidence of completion of the 40 hours  
22 of CPE. To date, respondent has completed 32 hours of CPE and failed to complete  
23 the remaining 8 hours by the July 21, 2000 deadline.

24 Condition 12 of probation provides as follows:

25 "12. Respondent shall reimburse the Board seven thousand, four  
26 hundred sixty-two dollars and twenty-one cents (\$7,462.21) which is the outstanding  
27 balance for the Board's initial investigation and prosecution costs. The payment shall  
28 be made within 120 days of the effective date of this Decision. In the alternative,



1 Respondent may make the payment in monthly installments of two hundred fifty dollars  
2 (\$250) each, commencing thirty (30) days after the effective date of this Decision and  
3 continuing each month until paid in full. If Respondent should fail to make a payment  
4 within thirty days of the payment's due date, the entire balance of the cost assessment  
5 shall become immediately due and payable."

6 7. The probation of respondent Cyrus Omead, CPA, is subject to  
7 revocation in that respondent failed to comply with condition 12 of probation and the  
8 proposed decision and order that became effective October 24, 1999, for the following  
9 reasons:

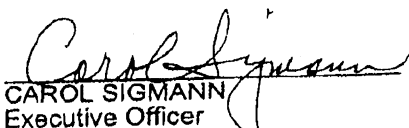
10 a. Respondent was required to pay the entire balance of  
11 \$7,462.21 by February 20, 2000, in reimbursement for the outstanding balance of costs  
12 incurred by complainant, or in the alternative, pay monthly installments of \$250 each  
13 month until full reimbursement is completed. To date, respondent has failed to make  
14 any payments toward the above costs. Respondent also failed to reimburse the Board  
15 in full, upon written notification.

16  
17 WHEREFORE, complainant prays that a hearing be held on the matters  
18 herein alleged, and that, following said hearing, the Board issue a decision:

19 1. Revoking probation in case No. D2-96-5 and imposing the revocation  
20 which was stayed;

21 2. Taking such other and further action as the Board deems proper.

22 DATED: September 29, 2000

23  
24   
25 CAROL SIGMANN  
26 Executive Officer  
27 Board of Accountancy  
28 Department of Consumer Affairs  
State of California

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

CYRUS OMEAD  
6240 Laurel Canyon Blvd., Suite 211  
North Hollywood, CA 91606

Respondent

)  
) Agency No. D1-96-5  
) OAH No. L1999040110  
)  
)  
)  
)  
)  
)

DECISION

The Attached Proposed Decision of the Administrative Law Judge  
is hereby adopted by the Board of Accountancy as its decision in the  
in the above-entitled matter.

This Decision shall become effective OCTOBER 24, 1999.

IT IS SO ORDERED SEPTEMBER 24, 1999.

BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By A. E. [Signature]  
Board President

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

)  
) Case No. D1-96-5  
)

CYRUS OMEAD  
6240 Laurel Canyon Blvd., Suite 211  
North Hollywood, CA 91606

) OAH No. L1999040110  
)  
)

Certified Public Accountant  
Certificate No. 46776

)  
)  
)  
)  
)  
)

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman,  
Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles,  
California on June 23, 1999.

Complainant, Carol Sigmann, was represented by Michel W. Valentine,  
Deputy Attorney General.

Respondent, Cyrus Omead ("Respondent") appeared and represented himself.

Oral and documentary evidence was received. The record was closed and the  
matter was submitted for decision.

During the hearing, a letter from Respondent to John E. O'Connor, dated  
October 11, 1994 was erroneously marked as Respondent's Exhibit "C". That exhibit  
is now marked and admitted as Respondent's Exhibit "C1".

The Administrative Law Judge sustained Complainant's relevancy objection to  
Respondent's Exhibits "C", "D" and "Q". On reconsideration and on his own motion,  
the Administrative Law Judge overrules all three objections. Exhibits "C", "D" and  
"Q" are admitted.

///

## FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings.

1. Carol Sigmann made and filed the Petition to Revoke Probation in her official capacity as Executive Officer of the Board of Accountancy ("the Board"), Department of Consumer Affairs, State of California.

2. On December 5, 1986, Certificate No. 46776 (Certified Public Accountant) was issued by the Board to Respondent. In July of 1996, Accusation No. AC-96-5 ("the Accusation") was filed against Respondent. As a result of the filing of that Accusation, Respondent's license was revoked, effective October 29, 1997. The revocation was stayed and Respondent was placed on probation for a period of three (3) years under specific terms and conditions. Respondent's license was scheduled to expire on April 1, 1999. The Board maintains jurisdiction over this matter pursuant to Business and Professions Code section 118(b) and the "Stipulation in Settlement of Issues and Discipline Except Issue of Costs" to which Respondent agreed in connection with Accusation No. AC-96-5 (Complainant's Exhibit 3).

3. The basis for the Petition to Revoke Probation is Respondent's failure to make timely payments on a cost recovery order and his failure to stay current on the filing of his quarterly reports. Respondent does not dispute that he has not complied with the payment schedule or that some quarterly reports were filed beyond their due dates. However, he asserts the Board deprived him of due process by failing to advise him that he could be liable for costs in connection with the disciplinary action brought against him, by failing to advise him in a timely manner of the amount of those costs, and by failing to afford him a hearing on the merits of his case.

4. Before the Accusation was filed Respondent had several conversations with John O'Connor, an Investigative CPA with the Board. At least one such conversation took place in Respondent's office. During that conversation, Respondent asked Mr. O'Connor how he was paid for his investigations. Mr. O'Connor stated his salary was paid through the fees licensees paid to the Board.

5. On June 7, 1996, Respondent wrote to Gregory Newington, Chief of the Board's Enforcement Program. In that letter, Respondent acknowledged receipt of a copy of the "Board of Accountancy Licensee Information, The Investigative Process." He stated he had not received a "package" to which he claimed Mr. O'Connor had referred.

///

///

///

6. On June 26, 1996, Mr. O'Connor wrote to Respondent, enclosing "copies of information that are sent to licensees at the time they are requested to appear at the Administrative Committee Investigative Hearings". In his letter, Mr. O'Connor also stated; "The Board of Accountancy does not advise licensees of their legal rights. You should consult an attorney for any legal questions you may have." Respondent did not consult an attorney at that time.

7. Rather than retain counsel, Respondent chose to represent himself until almost the end of the proceedings. However, he never read the Administrative Procedure Act or familiarized himself with the applicable law. He also made no attempt to conduct discovery pursuant to Government Code section 11507.6. Respondent now admits he made mistakes during the course of the investigation and litigation. However, he continues to attribute his failure to comply with the probationary terms to the manner in which he was treated by the Board.

8. On September 25, 1996, Deputy Attorney General Glynda Gomez wrote to Respondent making a settlement offer. She closed the letter with the following language:

"If you are interested in settling on the above terms, please advise me and I will prepare the appropriate paperwork and provide you with the dollar amount of costs."

9. On October 17, 1996, Ms. Gomez again wrote to Respondent. In that letter, she requested a response to her settlement offer. She then wrote:

"If I do not hear from you by the close of business on October 25, 1996, I will assume that you have no interest in settling this matter and will set it for hearing."

10. On November 27, 1996, Respondent wrote to Ms. Gomez. In that letter, Respondent acknowledged his awareness that, as of that time, the Board was seeking Attorney General's fees of \$5400 and Mr. O'Connor's fees of \$3300. He stated he could not afford that sum, but offered to pay fees of \$340 in four installments of \$85 each.

11. On December 2, 1996, Respondent again wrote to Ms. Gomez. In that letter, he admitted Ms. Gomez had requested a hearing on the Accusation and further stated that he did not wish to go to hearing. Instead, he agreed with the Board's determination of his errors and with "the proposals". He requested Ms. Gomez to forward his November 27, 1996 proposal to the Board. He closed the letter by stating, "I do not plan to participate in a hearing because I already agree with the Board's proposal except for the cost."

12. On May 20, 1997, Respondent entered into a stipulation according to which he settled all issues referenced in the Accusation except for the amount of costs recoverable by the Board. Respondent had retained an attorney by that time because he was having trouble dealing with Ms. Gomez due to what he considered to be her verbal abuse toward him. The stipulation contained the following language:

"3. Respondent is represented by counsel Wayne Hagendorf, Esq. in this matter. Respondent has fully and completely discussed with his counsel the effects of this stipulation.

"4. Respondent understands the nature of the charges alleged in the Accusation and that the charges and allegations constitute cause for imposing discipline upon his license to practice accountancy. Respondent is fully aware of his right to a hearing on the charges and allegations contained in said Accusation, his right to reconsideration, appeal and all other rights accorded pursuant to the California Business and Professions Code and Government Code and freely and voluntarily waives such rights.

"It is hereby ordered that Accountancy Certificate number 46776 issued to Cyrus Omead is revoked. However, the revocation is stayed and respondent is placed on probation for three (3) years on the following terms and conditions: . . .

"2. Submit Written Reports

Respondent shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. The respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to respondent's compliance with all terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

///

///

///

"12. Reservation of Costs Issue

The parties did not reach agreement on the payment of Costs of Investigation and Prosecution pursuant to Business and Professions Code Section 5107. Respondent shall proceed to hearing on the issue of the payment of Costs."

13. Respondent's attorney signed the stipulation but added the words, "As to Form Only". Respondent also signed the stipulation under the following language:

"I have carefully read and fully understand the stipulation and order set forth above. I have discussed the terms and conditions set forth in the stipulation and order with my attorney Wayne Hagendorf, Esq. I understand that in signing this stipulation I am waiving my right to a hearing on the charges set forth in the Accusation on file in this matter. I further understand that in signing this stipulation the Board may enter the foregoing order placing certain requirements, restrictions and limitations on my right to practice certified public accountancy in the State of California."

Respondent claims his attorney faxed him only the page with the above language on it. Respondent also claims he did not read the stipulation before he signed it. He further claims Ms. Gomez and/or other Board representatives told him he had no choice but to sign the stipulation. Otherwise, he would not be permitted to litigate the cost issue. All of those claims lack credibility in light of the language in Ms. Gomez's October 17, 1996 letter and the fact that Respondent was represented by counsel in connection with the settlement agreement.

14. The matter went to hearing on the cost recovery issue on May 20, 1997, the same day the stipulation was signed. Respondent was present at the hearing and was represented by counsel. On July 31, 1997, Administrative Law Judge Carolyn Magnuson issued her Proposed Decision. Among the factual findings she made were the following:

"VI. . . On June 22, 1995, the Board's Administrative Committee met with respondent, as well as with the Deputy Attorney General assigned to the case and the investigator.

"At this meeting, respondent was given various documents which set forth the procedures by which disciplinary cases are handled by the Board.

"Included with this material was a document which stated that settlement was generally available at all stages of the investigative and disciplinary process, noting that the costs for which a disciplined licensee would be liable would be lower when settlement occurred early in the disciplinary process."

15. The Board requested recovery of \$14,388.73. In her Proposed Decision, the Judge Magnuson awarded the Board only \$8712.21 and ruled that Respondent could pay that sum in 30 monthly payments of \$250. She also ruled: "If respondent should fail to make a payment within thirty days of when it is due, the entire balance of the cost assessment shall become immediately due and payable."

16. On September 29, 1997, the Board adopted the Judge Magnuson's Proposed Decision. The decision became effective on October 29, 1997.

17. Respondent made five monthly payments beginning on November 24, 1997. He made the fifth payment on March 31, 1998. Thereafter, believing he had been wronged by the Board, he refused to make any further payments. The outstanding balance is presently \$7462.21.

18. The monthly reports Respondent was to submit by the tenth day following the end of each quarter were single page forms on which Respondent was to check boxes in response to a set of printed questions. Respondent completed five of the reports. He submitted the report for the quarter ending June 30, 1998 in May of 1998. It was returned to Respondent because he had filed it before the end of the quarter. He then re-submitted it in August of 1998. However, by that time, the report was overdue. The report for the quarter ending on September 30, 1998 was submitted by Respondent on October 12, 1998, two days late. Respondent submitted the report for the quarter ending December 31, 1998 in March of 1999, approximately three months late. He has not submitted any reports since.

19. The Board sent five or six letters to Respondent after Respondent fell behind on his monthly payments and quarterly reports. In one of those letters, Respondent was offered the opportunity to show he had failed to pay the costs because of financial hardship, as he had previously claimed, by submitting copies of his 1995, 1996 and 1997 income tax returns. Respondent did not do so. The Board eventually demanded payment in full pursuant to Judge Magnuson's Order.

///

///

///



20. Respondent was dissatisfied with the Board's decision regarding the costs. Shortly after the Board adopted Judge Magnuson's Proposed Decision, he began a campaign to avoid further payment. He claimed the Board had deprived him of due process in not allowing him a hearing on the merits. He also claimed the Board deprived him of due process by not advising him it intended to recover costs and by not informing him of the amount of costs involved. Those assertions are without merit as evidenced by the communications described above, Respondent's knowledge of the opportunity to go to hearing, his statement that he did not wish to go to hearing except on the cost issue, and the fact that he fully litigated the cost issue. In addition, numerous communications occurred after the Board's Decision became effective.

21. On November 4, 1997, Mr. Newington wrote to Respondent in response to a letter Respondent had written on October 24, 1997. Respondent's letter had arrived at Mr. Newington's office on November 3, 1997. Mr. Newington advised Respondent that the Board's authority to grant reconsideration of his case expired on October 29, 1997, but that Respondent could seek judicial review of the Board's decision by filing a petition for writ of mandate on or before November 27, 1997, or he could petition the Board for reduction of the penalty after October 29, 1998. Mr. Newington enclosed copies of the relevant statutes with the letter.

22. Respondent did not avail himself of either remedy described by Mr. Newington. Instead, he contacted the Board and requested an appeal before the Administrative Committee. On December 11, 1997, Mr. Newington again wrote to Respondent, reiterating that the Board's authority to grant reconsideration had lapsed and that Respondent could petition the Board for a reduction of penalty on or after October 29, 1998.

23. Thereafter, Respondent questioned the Board's authority to recover costs and complained to the Board that the Board had failed to provide him with documents explaining the disciplinary process. He also sought to postpone his first probation appearance. On February 19, 1998, Mr. Newington wrote to Respondent denying the postponement request, quoting the applicable cost recovery statute, and reminding him of Respondent's letter of June 7, 1996 wherein Respondent acknowledged receipt of the appropriate documentation. Mr. Newington closed the letter with another reminder of Respondent's right to petition the Board for reduction of penalty on or after October 29, 1998.

24. On October 12, 1998, Respondent wrote to the Board, accusing the Board of having lied to him and of having deprived him of his due process rights. He requested a hearing before an "independent body." He did not receive a response to that letter.

///

///

25 On March 5, 1999, Respondent again wrote to the Board. In that letter, he requested information concerning the procedure he was to follow in seeking a reduction of his penalty pursuant to Government Code section 11522. The evidence did not disclose whether the Board responded to that letter.

### LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

Cause exists to revoke Respondent's probation for his failure to comply with the probationary terms, as set forth in Findings 3, 12, 13, 14, 15, 16, 17, 18 and 19.

Respondent's claims of unfairness and deprivation of his due process rights by the Board stand in stark contrast to the overwhelming weight of the evidence. Respondent was warned by a Board representative early in the investigation stage, that the Board would not be providing him with legal advice and that he should retain an attorney. Thereafter, on numerous occasions, the Board, despite its own admonition, repeatedly informed Respondent of his options with respect to settlement, hearing, and post-decision actions, throughout the investigation, litigation and post-litigation stages.

Respondent chose to represent himself both before and after the Board issued its final Decision, employing an attorney only for purposes of approving the settlement agreement and litigating the cost issue. However, with the exception of those two times, he did not seek the advice of counsel. Nor did he familiarize himself with the Administrative Procedure Act or any of the other statutes and/or regulations which governed his matter. He did not make a request for discovery because he had not made himself aware of his right to do so. Instead, he waited for the Board to inform him of everything he needed to know, despite the Board's early admonition that it would not be doing so.

///

///

///

///

///

///

In addition, there is nothing, other than Respondent's testimony, to indicate Respondent was unaware of his right to a hearing on the merits and/or his option of settling the case. (As indicated above, Respondent's testimony on that issue was not credible.) Ms. Gomez's letters of September 25, 1996 and October 17, 1996, and Judge Magnuson's factual findings, made that very clear. In addition, Respondent's own written statement that he wanted to settle the case and did not want a hearing on the merits, but solely on the cost issue, belies his testimony at the hearing. Further, his assertion that he was never informed of the amount of costs the Board was seeking to recover until shortly before the hearing on the cost issue also lacks credibility. He acknowledged a specific sum in a letter to Ms. Gomez on November 27, 1996, approximately six months before he signed the settlement agreement and went to hearing on the cost issue. He knew or should have known the costs would continue to rise as the case proceeded toward the hearing. However even though the costs had increased by the time the case was heard, Judge Magnuson ordered a substantial reduction of those costs.

The Administrative Law Judge is without authority to modify Judge Magnuson's Proposed Decision or the Board's final Decision. Further, Respondent is bound by the terms of the settlement agreement, whether or not he read them. (N.A.M.E.S. v. Singer (1979) 90 Cal.App.3d 653; Federico v. Frick (1970) 3 Cal.App.3d 872; See also, Frankel v. Board of Dental Examiners (1996) 46 Cal.App.4th 534.)

It is without question that Respondent genuinely felt, and continues to feel he was wronged by the Board. Regardless of whether his feelings of indignation and outrage are erroneously derived, they are understandable given his point of view. However, those feelings did not justify his choosing to ignore the settlement agreement he signed and the Board's final Decision regarding costs. He had options available to him to attempt to achieve a different result. The Board advised him of those options and he could have exercised any or all of them had he acted in a timely manner.

On the other hand, Respondent's failure to make more than five payments and his tardiness and subsequent cessation of filing quarterly reports may be liberally viewed as constituting one initial failure to comply with his probationary terms. That failure is deemed borne of confusion regarding his obligations and/or his anger toward the Board. Accordingly, this initial violation of probation is not viewed as grounds for complete revocation of Respondent's certificate provided his certificate is currently valid or will be so before the effective date of this Decision. It is, however, grounds for additional discipline.

///

///

## ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Petition to Revoke the Probation of Respondent, Cyrus Omead, is granted. Certified Public Accountant License No. 46776 issued to Respondent, Cyrus Omead, is revoked. However, if Respondent's certificate is presently in a renewed status or is renewed prior to the effective date of this Decision, the revocation is stayed and Respondent is placed on probation for three (3) years beyond the termination of the probationary period presently in effect, upon the following terms and conditions:

1. Respondent's license is actually suspended for a period of thirty (30) days, beginning forty-five (45) days following the effective date of this Decision.

2. Respondent shall obey all federal, California, other states' and local laws, including those relating to the practice of public accountancy in California.

3. Respondent shall submit, within ten (10) days of completion of the quarter, written reports to the Board on a form obtained from the Board. Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

4. Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner which notice shall be at least twenty (20) days.

5. Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the Board of Accountancy in its monitoring and investigation of Respondent's compliance with the probationary terms and conditions.

6. Respondent shall be subject to, and shall permit, a practice investigation of Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner which notice shall be at least twenty (20) days.

///

///

///

7. In the event Respondent should leave California to reside or practice outside of this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise affected by such period of out-of-state residency or practice except at the written direction of the Board.

8. If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. Respondent shall take and pass the auditing section of the CPA examination before the end of his initial period of probation. Respondent may not perform any audits until he passes the auditing section of the CPA examination. Failure to pass the required examination no later than one hundred (100) days before the termination of the initial period of probation, shall constitute a violation of probation.

10. Respondent must submit all working papers and draft reports relative to any audit engagement to an outside CPA for review for a period of six (6) months after completing and passing the auditing portion of the CPA examination. The reviewing CPA may be selected by Respondent, but must be acceptable to the Board.

11. Respondent shall complete forty (40) hours of professional education courses as specified by the Board or its designee at the time of Respondent's next probation appearance. The professional education courses shall be completed no later than one hundred (100) days prior to the termination of the initial period of probation. This shall be as part of and not in addition to continuing education requirements for relicensing.

Failure to satisfactorily complete the required courses as scheduled or failure to complete same no later than one hundred (100) days prior to the termination of the initial period of probation shall constitute a violation of probation.

///

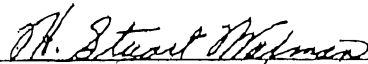
///

///

12. Respondent shall reimburse the Board seven thousand, four hundred sixty-two dollars and twenty-one cents (\$7462.21) which is the outstanding balance for the Board's initial investigation and prosecution costs. The payment shall be made within 120 days of the effective date of this Decision. In the alternative, Respondent may make the payment in monthly installments of two hundred fifty dollars (\$250) each, commencing thirty (30) days after the effective date of this Decision and continuing each month until paid in full. If Respondent should fail to make a payment within thirty days of the payment's due date, the entire balance of the cost assessment shall become immediately due and payable.

13. Upon successful completion of probation, Respondent's license will be fully restored.

DATED: July 6, 1999

  
H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General  
Of the State of California  
2 MICHEL W. VALENTINE,  
Deputy Attorney General, State Bar No. 153078  
3 300 South Spring Street, Suite 500  
Los Angeles, California 90013  
4 Telephone: (213) 897-1034

5 Attorneys for Complainant  
6  
7

8 **BEFORE THE**  
9 **BOARD OF ACCOUNTANCY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke  
12 Probation Against:

13 CYRUS OMEAD  
6240 Laurel Canyon Blvd., Suite 211  
14 North Hollywood, CA 91606

15 Certified Public Accountant  
Certificate No. 46776

16 Respondent.

No. D1-96-5

PETITION TO REVOKE  
PROBATION

17  
18 Complainant, Carol Sigmann, for causes for discipline, alleges:

19 1. Complainant, Carol Sigmann, is the Executive Officer of the Board of  
20 Accountancy (hereinafter the "Board"), Department of Consumer Affairs, State of  
21 California and makes and files this petition to revoke probation solely in her official  
22 capacity.

23

24 **LICENSE HISTORY**

25 2. On or about December 5, 1986, Certified Public Accountant Certificate  
26 Number 46776 was issued to Cyrus Omead, CPA (hereinafter "respondent"). On July  
27 17, 1996, an accusation was filed against respondent in Case No. AC-96-5. Effective

1 October 29, 1997, respondent's license to practice public accountancy was revoked; :  
2 however, revocation was stayed and respondent was placed on probation for three (3)  
3 years under terms and conditions

4 3. **PROBATION TERMS AND CONDITIONS**

5 Condition 2 of probation provides as follows:

6 "2. Respondent shall submit, within 10 days of completion of the quarter,  
7 written reports to the Board on a form obtained from the Board. The respondent shall  
8 submit, under penalty of perjury, such other written reports, declarations, and  
9 verification of actions as are required. These declarations shall contain statements  
10 relative to respondent's compliance with all terms and conditions of probation.  
11 Respondent shall immediately execute all release of information forms as may be  
12 required by the Board or its representatives."

13 4. **DECISION AND ORDER**

14 Proposed Decision and Order No. AC-96-5 effective October 29, 1997  
15 states:

16 "Respondent shall pay complainant \$8,712.21 in reimbursement for costs  
17 incurred by complainant. Said payment will be made in monthly installments of  
18 \$250 each, commencing 30 days after the effective date of the Decision and  
19 continuing each month until paid in full. If respondent should fail to make a  
20 payment within thirty days of when it is due, the entire balance of the cost  
21 assessment shall become immediately due and payable."

22 5. The probation of respondent Cyrus Omead, CPA, is subject to  
23 revocation in that respondent failed to comply with condition 2 of probation and the  
24 proposed decision and order effective October 29, 1997 for the following reasons:

25 a. Respondent was required to submit, within 10 days of completion of  
26 the quarter, written reports to the Board on a form obtained from the Board.  
27 Respondent failed to submit quarterly reports within 10 days after the completion



1 of a probation quarter. Quarterly reports for December 31, 1997, March 31,  
2 1998 and September 30, 1998 were received after the 10-day period. The  
3 quarterly report for June 30, 1998 was not received by the Board.


4 b. Respondent was required to pay \$8,712.21 in reimbursement for  
5 costs incurred by complainant, in monthly installments of \$250 each.  
6 Respondent failed to make cost reimbursement payments for the months of May,  
7 June and July 1998. Respondent also failed to reimburse the Board in full, upon  
8 written notification.

9  
10 WHEREFORE, complainant prays that a hearing be held on the matters  
11 herein alleged, and that, following said hearing, the Board issue a decision:

12 1. Revoking or suspending or otherwise imposing discipline upon  
13 Certified Public Accountant Certificate No. 46776 issued to Cyrus Omead;  
14 2. Revoking probation in case No. AC 96-5 and imposing the revocation  
15 which was stayed;

16 3. Taking such other and further action as the Board deems proper.

17 DATED: 2/25/99

18  
19  
20   
21 CAROL SIGMANN  
22 Executive Officer  
23 Board of Accountancy  
24 Department of Consumer Affairs  
25 State of California

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

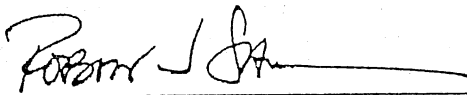
In the Matter of the Accusation ) Agency No. AC-96-5  
Against: ) OAH No. L-9612166  
)  
CYRUS OMEAD, )  
) DECISION  
Respondent. )  
\_\_\_\_\_ )

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Accountancy as its decision in the above-entitled matter.

This Decision shall become effective October 29, 1997.

IT IS SO ORDERED September 29, 1997.

BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By 

rfm

BEFORE THE BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	Agency No. AC-96-5
Against:	)	
	)	OAH No. L-9612166
	)	
CYRUS OMEAD,	)	
	)	
	)	
Respondents.	)	
_____	)	

PROPOSED DECISION

This matter came on regularly for hearing before Carolyn D. Magnuson, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on May 20, 1997.

The complainant was represented by Glynda B. Gomez, Deputy Attorney General.

Cyrus Omead appeared personally and was represented by Wayne Hagendorf, attorney at law.

Oral and documentary evidence was received and the matter submitted. The Administrative Law Judge finds the following facts:

I

Carol Sigman made and filed the Accusation solely in her official capacity as the Executive Officer, State Board of Accountancy, Department of Consumer Affairs (hereinafter "Board").

II

In December 1996, Accountancy Certificate No. 46776 was issued by the Board to Cyrus Omead ("respondent"). At all relevant times, the certificate was in full force and effect.

III

The parties have executed an agreement resolving all issues raised by the instant accusation except that of the amount of costs of investigation and prosecution which respondent should pay to the Board.

Thus, the sole issue for determination at the instant hearing is the appropriate amount of those costs.

#### IV

The Accusation alleges that respondent was grossly negligent in performing audits on employee benefit plans of one corporate client for the 1990 and 1991 tax years and in preparing the income tax return of an individual client for the 1989-90 tax year.

#### V

The investigation of the first complaint commenced in August 1993. Investigation of the second complaint commenced in July 1994. From 1993 through 1996, all of the Board's investigators worked out of Sacramento, handling investigations in all parts of the state from that location. Thus, all investigations in the Los Angeles area, including the instant one, required travel time by the investigator.

#### VI

In October 1994, the Board's investigator met with respondent in Los Angeles and conducted a practice exam. Prior to that meeting, the investigator had reviewed the complaints against respondent and had analyzed the respondent's relevant working papers.

Respondent was cooperative with the investigative process at all times. Further, respondent acknowledged that he had made the errors which it was alleged he had made.<sup>1</sup>

In November 1994, the investigator prepared his report on his investigative findings, which was provided to the Board's Administrative Committee for its action.

On June 22, 1995, the Board's Administrative Committee met with respondent, as well as with the Deputy Attorney General assigned to the case and the investigator.

At this meeting, respondent was given various documents which set forth the procedures by which disciplinary cases are handled by the Board.

Included with this material was a document which stated that settlement was generally available at all stages of the

---

<sup>1</sup> Although there may have been some papers which respondent promised to provide which were not received by the investigator, it is not clear whether the documents were not sent or whether they were misdirected.

investigative and disciplinary process, noting that the costs for which a disciplined licensee would be liable would be lower when settlement occurred early in the disciplinary process.

## VII

Beginning in mid-1995, respondent wanted to reach a stipulated settlement of the charges against him with the Board.

Respondent testified that he repeatedly contacted the Board's representatives, including the investigator, requesting settlement discussions, but was told that he would have to go through the litigation process.

The investigator testified that he refused to discuss settlement with respondent at the pre-filing conference and that he was not otherwise contacted by respondent concerning settlement.

This conflict in testimony must be resolved in respondent's favor. It is unlikely that an investigator, who handles many cases, would recall whether or not any particular respondent had contacted him or her about settlement, while it is very likely that an individual respondent would recall clearly if he or she had made such efforts.

## VIII

The Certification of Costs of Investigation and Prosecution submitted by complainant claims \$14,388.73 in reimbursable costs. There are \$6,707.23 in investigation services from the Board's Investigative CPA for the years 1994/95 through 1996/97, \$37.50 in investigation services from the Technical Review Panel in 1993/94, and \$7,644.00 in Attorney General's services for the years 1995/96 through 1996/97.

The certification is a summary of costs and does not identify the individuals whose time is being charged nor the nature of the services they provided.

The investigator testified that he had kept such detailed records of his time. Presumably, the attorney general too has similar records of the time and services billed by that office to the Board.

Thus, the "actual costs" referred to in section 125.3 were available to the complainant, but were not set forth in the certification.

## IX

Respondent does not dispute the amount of time that the Board's investigator has claimed he spent on the case. Rather, respondent believes that the time cannot not fairly be charged to him.

Respondent maintains that it is not fair to charge him for the time it took the investigator to travel from Sacramento to Los Angeles, since respondent thinks that the Board should station investigators in southern California to handle investigations in that area.<sup>2</sup>

Respondent also believes that the time the investigator spent preparing the case for trial after respondent indicated that he wanted to settle the matter, was time that need not have been expended at all.

#### X

Respondent also does not question the amount time spent by the attorney general. However, respondent believes that the time spent for trial preparation was not necessary, given the respondent's early attempts to initiate settlement negotiations and that, had someone responded to his requests for settlement, the costs associated with the case would have been far less.

#### XI

Respondent's final point is that, even if the costs claimed are properly reimbursable, he is not financially able to pay such a large amount of money.

Respondent testified that he owns his home outright, and he is purchasing the building in which his accounting firm is located, but is experiencing a cash flow problem because of tenant vacancies in the building. He also owns two cars.

Respondent's net income in 1996 was about \$34,000 and in 1997 is expected to be between \$50,000 - \$55,000. From that amount, respondent supports his wife and two children.

#### XII

Although the evidence established that respondent is making a modest living from his accounting practice, it did not establish that imposing the costs claimed by the complainant

---

<sup>2</sup> The investigator testified that between 60% and 70% of the Board's investigations occurred in southern California, but only recently has one Board investigator been stationed in southern California.

would work a sufficient hardship to justify reducing the amount on that basis alone.

In addition, although respondent's argument that the costs of travel to and from Los Angeles by the investigator ought to be excluded from the allowable costs has a certain equitable appeal given the distribution of the case load between northern and southern California, it is within the Board's discretion to locate its personnel where it sees fit, and in any case, there will always be licensees who are disadvantaged by where Board personnel are located.

#### XIII

However, with regard to the expenses incurred after respondent began to attempt to arrange a settlement, he has a valid point.

There is no doubt that had serious settlement negotiations been undertaken in 1995, the costs the Board incurred in this matter would have been substantially reduced.

The problem is, of course, that because the certification of costs only summarizes the charges, there is no way to accurately tell which of the charges by the investigator and by deputy attorney general are related to trial preparation.

#### XIV

The evidence does establish that the Board Investigative CPA charges for 1994/95, in the amount of \$1,941.72 are fair and reasonable as claimed, and the same is true of the charge for the technical review panel in the amount of \$37.50 in 1993/94.

Of the Investigative CPA charges for 1995/96 and 1996/97, substantially all of those charges must relate to preparation for trial, since the investigation had been completed in mid 1995, and since those charges could have been avoided, it would not be fair and reasonable under the circumstances to require respondent to pay them.

#### XV

The charges for the attorney's time are not as easily parsed. Some undetermined part of the time charged was for trial preparation, which could have been avoided had respondent's overtures for settlement been pursued, but there is no factual or logical basis for determining the value of that segment. Nonetheless, certain inferences can be made on which an adjustment can be based.

It is fair to suppose that half of the time spent by the attorney general on the case related to the investigation and filing of the case; about the eligibility of those costs, there is no dispute. Thus, \$3,822.00 of the total claimed attorney's fees are entirely recoverable.

It is also equitable to assume that some of the balance of the charges by the attorney general represented time spent for settlement negotiations, for which reimbursement is appropriate.

In addition, not all trial preparation would necessarily be held in abeyance because settlement negotiations were undertaken, and compensation for the costs of prudent preparation are recoverable.

While the calculation is necessarily imprecise in this instance, nonetheless, reducing the balance of the claimed attorney's fees by half to \$1,911.00 will assure that the legitimate claims of both parties are reasonably accommodated.

#### XVI

Because of respondent's financial circumstances, it would be an undue hardship to require him to reimburse the Board in a lump sum. Respondent will be on probation for a period of three years and may make monthly payments to the Board to retire the debt by the time his probation ends.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

It was established that, under the provisions of Business and Professions Code section 125.3, complainant is entitled to reimbursement of its costs of investigation and prosecution in the amount of \$8,712.21.

\* \* \* \* \*

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent shall pay complainant \$8,712.21 in reimbursement for costs incurred by complainant. Said payment will be made in monthly installments of \$250 each, commencing 30

///

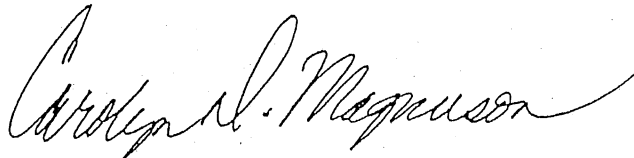
///

///



days after the effective date of the Decision and continuing each month until paid in full. If respondent should fail to make a payment within thirty days of when it is due, the entire balance of the cost assessment shall become immediately due and payable.

Dated: July 31, 1997

A handwritten signature in cursive script, reading "Carolyn D. Magnuson". The signature is written in dark ink and is positioned above the printed name and title.

CAROLYN D. MAGNUSON  
Administrative Law Judge  
Office of Administrative Hearings

ORIGINAL

DANIEL E. LUNGREN, Attorney General  
of the State of California  
GLYNDA B. GOMEZ,  
Deputy Attorney General, State Bar No. 143448  
Department of Justice  
300 South Spring Street  
Los Angeles, California 90013  
Telephone: (213) 897-2542

Attorneys for Complainant

BEFORE THE BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	NO. AC 96-5
	)	
CYRUS OMEAD	)	OAH NO. L-9606120
6240 Laurel Canyon Blvd.,	)	STIPULATION IN
Suite 211	)	SETTLEMENT OF ISSUES AND
North Hollywood, CA 91606	)	DISCIPLINE EXCEPT ISSUE
	)	OF COSTS
Accountancy Certificate No. 46776	)	
	)	
Respondent.	)	
	)	

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Accountancy, Department of Consumer Affairs, ("Board") the parties submit this Stipulation and Decision to the Board for its approval and adoption as the final disposition of the Accusation.

The parties stipulate the following is true:

1. An Accusation, No. AC-96-5, is currently pending against Cyrus Omead ("respondent"), before the Board. The Accusation, together with all other statutorily required documents, was duly served on the respondent on or about August 2, 1996, and respondent filed a timely Notice of Defense (contesting the Accusation). A copy of Accusation No. AC-96-5 is attached as

EXHIBIT 2  
9/6/21/66  
5/10/66  
Blumberg No. 5119

1 Attachment "A" and incorporated by reference as if fully set forth.

2 2. At all times relevant herein, respondent has been licensed by  
3 the Board under Accountancy Certificate No. 46776.

4 3. Respondent is represented by counsel Wayne Hagendorf, Esq. in  
5 this matter. Respondent has fully and completely discussed with his counsel  
6 the effects of this stipulation.

7 4. Respondent understands the nature of the charges alleged in  
8 the Accusation and that the charges and allegations constitute cause for  
9 imposing discipline upon his license to practice accountancy. Respondent is  
10 fully aware of his right to a hearing on the charges and allegations contained  
11 in said Accusation, his right to reconsideration, appeal and all other rights  
12 accorded pursuant to the California Business and Professions Code and  
13 Government Code and freely and voluntarily waives such rights.

14 5. Respondent admits the truth of each and every allegation of  
15 the Accusation No. AC-96-5, and agrees that respondent has thereby subjected  
16 his license to discipline. Respondent agrees to the Board's imposition of  
17 penalty as set out in the Order below.

18 6. Admissions made by respondent herein are for purposes of this  
19 proceeding, for any other disciplinary proceedings by the Board, and for any  
20 petition for reinstatement, reduction of penalty, or application for  
21 relicensure, and shall have no force or effect in any other case or  
22 proceeding.

23 7. It is understood by respondent that, in deciding whether to  
24 adopt this stipulation, the Board may receive oral and written communications  
25 from its staff and the Attorney General's office. Communications pursuant to  
26 this paragraph shall not disqualify such persons from future participation in  
27 this or any other matter affecting respondent. In the event this settlement

1 is not adopted by the Board, the stipulation will not become effective and may  
2 not be used for any purpose, except for this paragraph, which shall remain in  
3 effect.

4 8. In consideration of the foregoing admissions and findings, the  
5 parties agree that the Board may, without further notice of formal proceeding,  
6 issue and enter an Order as follows:

7 ORDER

8 A. IT IS HEREBY ORDERED that Accountancy Certificate number 46776  
9 issued to Cyrus Omead is revoked. However, the revocation is stayed and  
10 respondent is placed on probation for three (3) years on the following terms  
11 and conditions:

12 STANDARD TERMS AND CONDITIONS

13 1. ObeY all Laws

14 Respondent shall obey all federal, California, other states' and local  
15 laws, including those relating to the practice of public accountancy in  
16 California.

17 2. Submit Written Reports

18 Respondent shall submit, within 10 days of completion of the quarter,  
19 written reports to the Board on a form obtained from the Board. The  
20 respondent shall submit, under penalty of perjury, such other written reports,  
21 declarations, and verification of actions as are required. These declarations  
22 shall contain statements relative to respondent's compliance with all terms  
23 and conditions of probation. Respondent shall immediately execute all release  
24 of information forms as may be required by the Board or its representatives.

25 3. Personal Appearances

26 Respondent shall, during the period of probation, appear in person at a  
27 maximum of two (2) interviews/meetings per calendar year as directed by the

1 Board or its designated representatives, provided such notification is  
2 accomplished in a timely manner which notice shall be at least (20) twenty  
3 days. Said interviews/meetings shall be in either Los Angeles County or  
4 Orange County.

5 4. Comply with Probation

6 Respondent shall fully comply with the terms and conditions of the  
7 probation imposed by the Board and shall cooperate fully with representatives  
8 of the Board of Accountancy in its monitoring and investigation of the  
9 respondent's compliance with probation terms and conditions.

10 5. Practice Investigation

11 Respondent shall be subject to, and shall permit, a practice  
12 investigation of the respondent's professional practice. Such a practice  
13 investigation shall be conducted by representatives of the Board, provided  
14 notification of such review is accomplished in a timely manner which notice  
15 shall be at least (20) days.

16 6. Tolling of Probation For Out-of State Residence/Practice

17 In the event respondent should leave California to reside or practice  
18 outside of this state, respondent must notify the Board in writing of the date  
19 of departure and return. Periods of non-California residency or practice  
20 outside the state shall not apply to reduction of the probationary period, or  
21 of any suspension. No obligation imposed herein, including requirements to  
22 file written reports, reimburse the Board costs, or make restitution to  
23 consumers, shall be suspended or otherwise affected by such periods of out-of  
24 state residency or practice except at the written direction of the Board.

25 7. Violation of Probation

26 If respondent violates probation in any respect, the Board, after giving  
27 respondent notice and an opportunity to be heard, may revoke probation and

1 carry out the disciplinary order that was stayed. If an accusation or a  
2 petition to revoke probation is filed against respondent during probation,  
3 the Board shall have continuing jurisdiction until the matter is final, and  
4 the period of probation shall be extended until the matter is final.

5 8. Completion of Probation

6 Upon successful completion of probation, respondent's license will be  
7 fully restored.

8 ADDITIONAL TERMS AND CONDITIONS OF PROBATION

9 9. CPA Examination

10 Respondent shall take and pass the auditing section of the CPA  
11 examination before the end of his probation. Respondent may not perform any  
12 audits until he passes the auditing section of the CPA examination. Failure  
13 to pass the required examination no later than 100 days before termination of  
14 probation, shall constitute a violation of probation.

15 10. Supervision of Audit engagements

16 Respondent must submit all working papers and draft reports relative to  
17 any audit engagement to an outside CPA for review for a period of six (6)  
18 months after completing the auditing portion of the CPA examination. The  
19 reviewing CPA may be selected by the respondent, but must be acceptable to the  
20 Board.

21 11. Continuing Education Courses

22 Respondent shall complete forty (40) hours of professional education  
23 course as specified by the Board or its designee at the time of respondent's  
24 first probation appearance. The professional education courses shall be  
25 completed 100 days prior to termination of this probation. This shall be as  
26 part of and not in addition to continuing education requirements for  
27 relicensing.

1 Failure to satisfactorily complete the required courses as scheduled or  
2 failure to complete same no later than 100 days prior to the termination of  
3 probation shall constitute a violation of probation.

4 12. Reservation of Costs Issue

5 The parties did not reach agreement on the payment of Costs of  
6 Investigation and Prosecution pursuant to Business and Professions Code  
7 Section 5107. Respondent shall proceed to hearing on the issue of the payment  
8 of Costs.

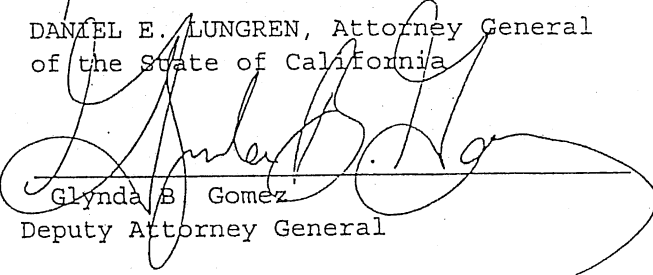
9 B. Accusation No. AC-96-5 Paragraphs Numbers 1 through 10,  
10 inclusive, are admitted.

11 C. The within stipulation shall be subject to the approval of the  
12 Board. If the Board fails to adopt this stipulation as its Order, the  
13 stipulation shall be of no force or effect for either party.

14 We concur in the stipulation and order.

15 DATED: 5/20/97

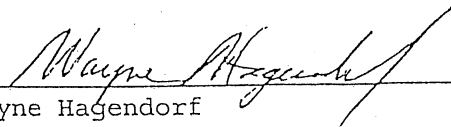
16 DANIEL E. LUNGREN, Attorney General  
17 of the State of California

18   
19 Glynda B. Gomez  
20 Deputy Attorney General

21 Attorneys for Complainant

22 *As to Form Only*

23 DATED: 5/20/97

24   
25 Wayne Hagendorf  
26 Hagendorf & Abernathy  
27 1901 Avenue of the Stars, Suite 277  
Los Angeles, CA 90067

Attorney for Respondent

I have carefully read and fully understand the stipulation and order set forth above. I have discussed the terms and conditions set forth in the stipulation and order with my attorney Wayne Hagendorf, Esq. I understand that in signing this stipulation I am waiving my right to a hearing on the charges set forth in the Accusation on file in this matter. I further understand that in signing this stipulation the Board may enter the foregoing order placing certain requirements, restrictions and limitations on my right to practice certified public accountancy in the State of California.

*Cyrus Omrad*

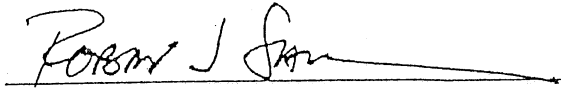
CYRUS OMRAD  
Respondent



DECISION AND ORDER  
OF THE

The foregoing Stipulation and Order, in No. 1871, is hereby adopted as the Order of the Board of Accountancy, Department of Consumer Affairs, State of California. An effective date of October 29, 1997, has been assigned to this Decision and Order.

Made this 29th day of September, 1997.



PRESIDENT  
FOR THE BOARD

GBG:gbg  
035411110-la95ad2247

DANIEL E. LUNGREN, Attorney General  
of the State of California  
GLYNDA B. GOMEZ,  
Deputy Attorney General, State Bar No. 143448  
Department of Justice  
300 South Spring Street  
Los Angeles, California 90013  
Telephone: (213) 897-2542

Attorneys for Complainant

BEFORE THE BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against: ) NO. AC-96-5  
)  
)  
CYRUS OMEAD )  
6240 Laurel Canyon Blvd., #211 ) ACCUSATION  
North Hollywood, CA 91606 )  
)  
Accountancy Certificate No. 46766 )  
Respondent. )

COMES NOW Complainant Carol Sigmann, who as cause for disciplinary action against Respondent Cyrus Omead, alleges:

## PARTIES

1. Complainant is Executive Officer of the Board of Accountancy, Department of Consumer Affairs, State of California ("Board") and makes and files this accusation solely in her official capacity.

LICENSE STATUS

2. On or about December 5, 1986, Accountancy Certificate No. 46766 was issued by the Board to Cyrus Omead ("respondent"). Said accountancy Certificate was and at all times alleged herein and is currently in full force

1 and effect until April 1, 1997, at which time it shall expire if not renewed.

2 JURISDICTION

3 3. Business and Professions Code Section 5100 provides that the Board  
4 may revoke, suspend or refuse to renew any permit or certificate, or may  
5 censure the holder of a certificate or permit for unprofessional conduct.

6 4. Business and Professions Code Section 5100 also provides that  
7 unprofessional conduct includes but is not limited to gross negligence in the  
8 practice of public accountancy or bookkeeping operations (Business and  
9 Professions Code Section 5100 (c)) and willful violation of any Board Rule  
10 (Business and Professions Code Section 5100(f)).

11 5. Business and Professions Code Section 5062 provides that a licensee  
12 shall issue a report which conforms to professional standards upon completion  
13 of a compilation, review or audit of financial statements.

14 6. Board Rule 58.3, Title 16 of the California Code of Regulations  
15 Section 58.3 ("CCR"), provides that an accountant is required to issue a  
16 report conforming to professional standards whenever he completes a  
17 compilation or review of the financial statements of a non-public entity.

18 GROSS NEGLIGENCE

19 7. Respondent's certificate is subject to disciplinary action for  
20 Gross Negligence in the practice of public accountancy in violation of Section  
21 5100(c) on account of the following facts:

22 AREA TRADE BINDERY INC.

23 A. Respondent was engaged to perform an audit of the Area Trade Bindery  
24 Inc. Defined Benefit Pension Plan and the Area Trade Bindery Inc. profit  
25 sharing Plan ("Area Trade Bindery Audits").

26 In performing the Area Trade Bindery Audits, respondent:

- 27 1) failed to properly plan and supervise his audits.  
2) failed to include an evaluation of the internal structure and

1 assessed level of control risk in his working papers.

2 3) failed to document assessment and/or consideration of errors  
3 and irregularities.

4 4) failed to obtain and document sufficient competent evidential  
5 matter to afford a reasonable basis for an opinion regarding the  
6 financial statements under audit.

7 5) failed to obtain written representations from management.

8 6) failed to secure a legal representation letter from the client's  
9 lawyers concerning litigation, claims and assessments.

10 STEVE POWER-FARDY

11 B. Respondent prepared California and Federal tax returns for Steve  
12 Power-Fardy for the years 1987 through 1989. Respondent deducted both  
13 Individual Retirement Account (IRA) and Keogh Plan contributions on Steve  
14 Power-Fardy's State and Federal tax returns from 1988 and 1989 in violation of  
15 Internal Revenue Code Section 219(g). As a result, Steve Power-Fardy was  
16 subjected to an audit, required to pay additional taxes, penalties and  
17 interest to the Internal Revenue Service and the California Franchise Tax  
18 Board.

19 COMPILATION REPORT FAILED TO CONFORM TO PROFESSIONAL STANDARDS

20 8. Respondent's certificate is subject to discipline for issuing a  
21 report which failed to conform to professional standards in violation of  
22 Business and Professions Code Section 5062 and CCR Section 58.3 on account of  
23 the following facts:

24 JUDITH FONTAINE AGENCY, INC. AND

25 ENCORE COMMUNICATIONS

26 Compilation reports prepared by respondent for his clients, the Judith  
27 Fontaine Agency, Inc. and Encore Communications ("the Fontaine and Encore  
Compilation Reports") did not conform to the Statement on Standards for

Accounting and Review Services requirements for reports issued after December 15, 1993 in that:

(1) They did not state that substantially all disclosures required by Generally Accepted Accounting Principles were omitted.

(2) They did not indicate the degree of responsibility if any, respondent took for the supplemental information contained therein.

#### COSTS

9. California Business and Professions Code Section 5107 in pertinent part provides that the executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found guilty of unprofessional conduct in violation of subdivisions (b), (c), (i), and (j), of Section 5100 of the California Business and Professions Code to pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited to attorneys' fees.

#### PRAYER

WHEREFORE, complainant requests that the Board hold a hearing on the matters alleged herein, and that following said hearing, the Board issue a decision:

1. Revoking or suspending Accountancy Certificate Number 46766, heretofore issued to respondent Cyrus Omead;
2. Directing respondent Cyrus Omead to pay to the Board a reasonable sum for its investigative and enforcement costs of this action pursuant to Section 5107 of the Business and Professions Code; and

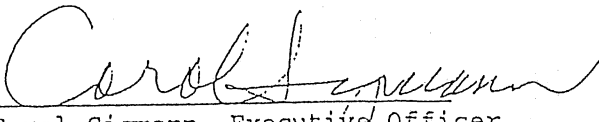
//

//

1 3. Taking such other and further action as the deems  
2 appropriate to protect the public health, safety and  
3 welfare.

4 DATED:

July 17, 1996

5  
6   
7 Carol Sigmann, Executive Officer  
8 Board of Accountancy  
9 State of California  
10 Complainant  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27